

Thomas A. Mackey, PhD, APRN-BC
Nursing Business
2883 Palomino Springs
Bandera, Texas 78003
Tel: (713) 775-2892

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

| | | |
|--------------------|---|----------------|
| IN RE: | & | CASE NO: |
| | & | |
| HUMBERTO VELA, JR. | & | 15-50016-L2-11 |
| | & | (CHAPTER 11) |
| DEBTOR | & | |

BLR 9013 NOTICE: THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**Fee Application of Thomas A. Mackey
Patient Care Ombudsman
For Allowance of Compensation and Reimbursement of Expenses For May
17, 2016**

TO THE HONORABLE DAVID R. JONES,
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Thomas A. Mackey, Patient Care Ombudsman, (“Applicant”) in the above referenced Chapter 11 case and file his First Fee Application for Approval of Fees for May 17, 2016

Summary

Name of Applicant: Thomas A. Mackey

Role in Case: Patient Care Ombudsman

Application Period: May 17, 2016

| | Professional Fees | Expenses | Total |
|-------------------------------|-------------------|----------|------------|
| Outstanding Amounts Requested | \$3,150.00 | \$305.11 | \$3,455.11 |

BACKGROUND

Humberto Vela, Jr. (the “Debtor”) filed for relief under Chapter 11 of the Bankruptcy Code on February 19, 2015. Dr. Thomas A. Mackey was appointed as the Patient Care Ombudsman (PCO) with the intent of evaluating and reporting to the Court on the quality and safety of patient care. Dr. Mackey is a Registered Nurse and Nurse Practitioner with 42 years of clinical, teaching, business and administrative experience. Dr. Mackey has provided PCO services since 2012. The PCO was directed to submit bi-monthly reports on his evaluation pursuant to §333(b) regarding the patient care, safety, and quality provided post bankruptcy petition by the Debtor through the San Agustin Home Health Services (Facility).

Since his appointment as PCO, Dr. Mackey has diligently worked fulfilling his duties by making five on-site facility visits followed by constructive reports filed with the Court and Debtor. Additionally, because of significant patient safety concerns, Dr. Mackey counseled the Debtor and his staff regarding patient safety issues with the intent of avoiding negative actions by the Court and certifying agencies. Subsequently, the Debtor adopted the recommendations that have significantly improved the quality and safety of the Debtor’s organization.

Dr. Mackey made clear the terms of employment and compensation prior to engagement as the PCO: \$350.00 per hour and \$175.00 per hour for travel time plus expenses incurred (mileage, hotel, meals, filing fees, etc.). Dr. Mackey visited the facility on six occasions: April 20, 2015, June 16, 2015, August 28, 2015 and October 28, 2015,

March 15, 2016 and May 17, 2016. Payment for the first five visits has been received in full after intervention by the Court appointed Trustee, Mr. Ronald Hornberger. The present Fee Application is being filed only for the visit on May 17, 2016.

Breakout of Current Application

| NAME/CAPACITY | TOTAL HOURS | RATE | TOTAL |
|------------------------------|-------------|-------------|------------|
| Dr. Mackey | 6 | \$350.00/hr | \$2,100.00 |
| Travel Time for Dr. Mackey | 6 | \$175.00/hr | \$1,050.00 |
| Expenses | | | \$305.11 |
| Payment received from Debtor | | | \$0 |
| Outstanding Balance | | | \$3,455.11 |

Itemized statements are attached which detail the dates and descriptions of services rendered or expenses incurred by Dr. Mackey, time expended on the service (where appropriate), and total amount. Dr. Mackey is entitled to prompt payment for the Ombudsman services rendered. The Debtor indicates he is unable to make regular payments on invoices. Dr. Mackey is unwilling and financially unable to continue PCO visits to the Debtor unless payment is forthcoming from the Debtor.

WHEREFORE, PREMEISES CONSIDERED, Applicant prays that the Court approve \$3,150.00 in fees and \$305.11 in expenses from Debtor to Applicant.

/s/Thomas Mackey
Patient Care Ombudsman

Certificate of Service

I hereby certify that true and correct copies of the foregoing were provided to all parties in interest either via ECF to registered users or US first class mail, postage prepaid on the 20th day of May 2016.

/s/ Thomas Mackey
Patient Care Ombudsman

DEBTOR:

Humberto Vela, Jr.
2105 Guatemozin St.
Laredo, TX 78043

UNITED STATES TRUSTEE:

United States Trustee
515 Rusk Ave., Suite 3516
Houston, TX 77002

Ronald Hornberger
rhornberger@pg-law.com

PARTIES REQUESTING NOTICE:

Cantera Court Complex
9802 McPherson #135
Laredo, TX 78045

Compass Bank
700 San Bernardo Avenue
Laredo, TX 78040

Comptroller of Public Accounts
Laredo Enforcement Office
1202 East Del Mar Blvd., Ste. 1
Laredo, TX 78041-2400

EG Professional Services
2903 Victor Lugo Ct.
Laredo, TX 78041

IRS
P.O. Box 21126
Philadelphia, PA 19114

South Texas Waste System
428 Hilltop Road
Laredo, TX 78045

Southern Sanitation
220 Guadalupe
Laredo, TX 78040

Texas Comptroller of Public Accounts
111 E. 17th Street
Austin, TX 78774-0100

Office of the US Trustee
515 Rusk Ave., Suite 3516
Houston, Texas 77002

Texas Department of Aging and Disability
P.O. Box 149030
Austin, Texas 78714-9030

Capital One Retail Services
P.O. Box 60504
City of Industry, CA 91716

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

| | | |
|---|--|---|
| IN RE: HUMBERTO VELA, JR. DEBTOR | & & & & & | CASE NO: 15-50016-L2-11 (CHAPTER 11) |
|---|--|---|

**ORDER GRANTING THIRD INTERIM FEE APPLICATION
OF DEBTOR'S COUNSEL FOR ALLOWANCE OF COMPENSATION
FOR THE PERIOD OF May 17, 2016**

The Court, after notice and hearing, has considered the Interim Fee Application for Allowance of Compensation for the period of May 17, 2016 filed by Dr. Thomas Mackey, the patient care ombudsman. The Court has determined that the Application meets the requirements as set forth under Section 330(a)(3)(A) of the Bankruptcy Code, Bankr. R 2016 and Bankr. Loc. R. 2016. The Court has further considered the following factors set forth in *In re First Colonial Corp. Of America*, 544 F.2d 1291 (5th Cir.), cert. Denied, 431 U.S. 904 (1977) in determining the amount of professional fees and expense reimbursements to be awarded:

- The time and labor required;
- The novelty and difficulty of the questions;
- The skill requisite to perform the services properly;
- The preclusion of other employment by the attorneys due to acceptance of the Case;
- Customary fees;
- Whether the fee is fixed or contingent;
- Time limitations imposed by the client or other circumstances;
- The amount of time involved and the result obtained;
- The experience, reputation and ability of the attorneys;
- The “undesirability” of the case;
- The nature and length of the professional relationship with the client; and
- Awards in similar cases.

After consideration of these factors, the Court has concluded that the services detailed in the Application provided substantial benefit to the estate and its creditors.

Accordingly, it is **ORDERED THAT:**

Dr. Thomas Mackey is awarded interim compensation in the amount of \$3,150.00 for professional fees and the amount of \$305.11 for reimbursement of expenses for the period May 17, 2016. Further, the Debtor is ordered to reimburse Dr. Mackey the said fees and expenses within 30 days.

SIGNED this _____ day of May 2016.

UNITED STATES BANKRUPTCY JUDGE

DATED this _____ day of May 2016

Respectively submitted

Thomas A. Mackey, PhD, APRN-BC